

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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**UNITED STATES of AMERICA,**  
**Plaintiff**

**SENTENCING MEMORANDUM**

**V.**

**04-CR-402**  
**TJM**

**YASSIN AREF,**  
**Defendant**

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**YASSIN AREF'S HISTORY AND CHARACTER**

**Brief Background**

Yassin Aref is a refugee from Iraqi Kurdistan - his village, Hashazini, was completely destroyed by Saddam Hussein's Army in 1988. Mr. Aref, 36, came to the United States in 1999 with his wife, Zuhur, and three young children, after having lived in Syria for several years under a United Nations refugee program. Already a scholar, poet and imam in Iraq, not long after arriving in Albany, Mr. Aref became the imam of a newly formed mosque here.

Yassin Aref is an extremely sincere and honest man devoted to his religion and his family. He is also inquisitive, scholarly and poetic, soaking up knowledge and poetry and using them to teach others to live in a positive manner.

Mr. Aref is completely committed to following the laws of this country, and always was, from the first day he set foot on American soil. This commitment, in addition to having been captured in a government recording (see Mr. Aref's Rule 29 Memorandum, at 17), is reflected in many letters from those who know him, including that of Dr. Shamshad Ahmad, the President of the Masjid-As-Salam Mosque, who wrote:

“...I can say that Yassin had more personal contact with me than with any other single individual while staying in Albany. I, therefore, think that I have been able to understand him, his personality, and his thought process extremely well. I was at odds with him and in disagreement on many aspects of life including several religious interpretations as well as the mechanisms of running the mosque. *But we had a total agreement that respecting the law of the land and that its obedience is an integral part of our religion, and acts of terrorism in any shape or form are against it. ...*” (Letter from Dr. Ahmad, attached as Exhibit “A,” at 1, emphasis supplied)

Similarly, another member of the Mosque, Rashid Abdulhaqq Hamsa, stated:

“...Imam Yassin taught this community to respect the laws of this country and always be truthful in our dealings in all mutual transactions with everyone we deal with, Muslim or non-Muslim..” (Letter from Rashid Abdulhaqq Hamza, Exhibit “A,” at 22)

### **Imam**

When Yassin Aref came to Albany in October, 1999, he very quickly started volunteering his time to renovate the building where the Masjid-As-Salam Mosque was being established. Dr. Ahmad, among other points he made in his letter to the Court, described how hard Yassin worked - Dr. Ahmad stated:

“In 1999, I founded Masjid As-Salam, a mosque on Central Avenue in Albany, and have since been its president and in charge of its overall affairs. Mr. Yassin Aref arrived in Albany around the same time the mosque was being established and its building was being renovated. He joined me in this effort from the first day and participated physically with total devotion and commitment ... all voluntarily. ...[H]e spent long hours with me, each and every day without interruption for eight consecutive months....” (Letter from Dr. Ahmad, attached as Exhibit “A,” at 1)

In August, 2000 Yassin Aref became the Imam of that Mosque. As such he led prayers five times each day and gave a sermon every Friday. Another part of his duties was counseling the members of the mosque. Dr. Ahmad described these duties and pointed out the incredible devotion Yassin showed toward the members, who miss him greatly. Dr. Ahmad stated:

“...Eventually he was appointed the Imam of this mosque in August, 2000. Since then he spent literally all his time in the mosque conducting five daily prayers, giving sermons, counseling the members and interacting with me in administering the mosque

and handling the affairs of the Muslim community.... His care, concern, and generosity for the members of the Muslim community were enormous so much that many times I considered it excessive....” (Exhibit “A,” at 2)

Yassin also taught Arabic and religious studies to a variety of students. One of those students, Salih Abdullah, wrote that the Imam had a major positive effect on his life, stating:

“...One of the first people I met while at the masjid was Imam Yasin. His presence was the first thing that impressed me. His humility and character was something rarely seen in individuals. I began attending the masjid more often and became closer to him [taking] from the vast amount of knowledge he possessed and good character he embodied. I was immediately touched by his sincerity and his balanced leadership. Through his presence I began to love Islam and practice it faithfully. He advised me to continue to study Islam and strengthen my ties with my family whom I was having problems with during that time, both of which have improved significantly. ...” (Letter from Salih Abdullah, Exhibit “A,” at 9)

Another member of the mosque, Rahsid Abdulhaqq Hamza, similarly wrote:

“ Imam Yassin taught me the Qur’an is not something just to recite beautifully, but is a Guide given to us by our CREATOR to be implemented into our daily lives. .” (Letter from Rashid Abdulhaqq Hamza, Exhibit “A,” at 22)

While the Mosque President and a few of the members did write letters, others, especially immigrants, wanted to write but were too afraid that there might be repercussions from the government if they expressed their support for their Imam. (However, many of them did sign the petition which is discussed below.) This fear was mentioned by Times Union columnist Fred Lebrun, who stated in a recent column:

“...Well, according to the Muslim Solidarity Committee, a local support group for Aref and Hossain, the government has been dazzlingly successful in spreading fear and distrust in the local immigrant Muslim community. However, that would be a fear of the FBI and our government. ...” (January 16, 2007 Times Union Column, attached as Exhibit “D,” at 1-2)

Cathy Callan, a non-Muslim, wrote:

“As a non-Muslim member of the greater Albany community, I have come to know many of the members of the Masjid Assalam Mosque... In getting to know this group of good, honest and humble people, I have come to realize how much Imam Aref is

missed at the mosque. In conversations with some of these folk, Imam Aref's name comes up regularly as an important member who offered wisdom, comfort and support to anyone who came to him. ..." (Letter from Cathy Callan, Exhibit "A," at 16)

### **Reputation for Honesty and Courage**

Yassin Aref has a well-deserved reputation for a very uncommon honesty, integrity and courage. This is not only reflected in the many letters of support for him, but is also shown in the government recordings and in Mr. Aref's trial testimony. As an example, when Malik asked Mohammed Hossain about whether Mr. Aref would make a good witness for the loan, Mr. Hossain said, "he's a very trustworthy person," "He speaks the truth, always keeps his word," and "He's not afraid of anything. He's only afraid of God." (December 5, 2003 Transcript, Page 12, lines 11, 17, 19.)

These traits of Yassin Aref were also shown at the trial. First, when Halabja survivor witness Mohammed Aziz seemed to have some difficulty identifying Yassin, Yassin simply stood and waved. Later, when Yassin was on the stand, he refused to follow the generally accepted fiction of "refreshing" his memory with a document when there is no actual memory of the relevant details. He insisted that he did not remember certain statements, but was relying only on the transcript. (Trial Transcript, at 1574) Similarly, after hearing Kassim Shaar testify that Yassin had searched Malik for a recording device on February 12, Yassin insisted that while he *did* search Malik, that happened on a different day. There was absolutely no reason for Yassin to say that, other than that he believed it was the truth.

In addition, Yassin Aref is in the process of writing a memoir about his life in Kurdistan, which is excerpted as Exhibit "B."<sup>1</sup> Jeanne Finley is working to edit that manuscript, and she

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<sup>1</sup>Exhibit "B" is being filed under seal as it contains copyrighted material.

wrote a letter to the Court stating:

“...In my years of editing both fiction and non-fiction manuscripts, I have never encountered a voice like Mr. Aref’s - a moral and just voice incapable of telling a lie, in both the literary and literal sense, a voice that cannot help but speak the truth because that is the guiding principle of the real man behind the voice.” (Letter from Jeanne Finley, attached as Exhibit “A,” at 5)

## His Family

Yassin Aref is married and has four children, Alaa, 11, Raiber<sup>2</sup>, 9, Kocher, 8, and Dilnia, one. Yassin married his wife, Zuhur, while they were still in Kurdistan, but soon afterwards, they emigrated to Syria because Kurdistan was in ruins, infighting between various Kurdish independence groups abounded, and they thought their only hope for a brighter future lay elsewhere.

Yassin and Zuhur’s children, from left, Alaa (holding Dilnia), Raiber and Kocher. Photo taken by Dave Capone and exhibited by unseen-america



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<sup>2</sup>Because under Saddam Hussein, the use of Kurdish names was prohibited, it is traditional for Iraqi Kurdish children to have *two* first names, an at-times secret Kurdish name, and an Arabic name. The names used herein are the children’s Kurdish names, but they also have Arabic names, which are used at times, such as in the attached letter from Maribeth Lynn, who uses the Arabic names for Raiber and Kocher. (Even though it is no longer necessary, the tradition continues, in order to respect both the Kurdish and Islamic traditions.)

Zuhur, who had already been traumatized by life in Kurdistan, including having to flee the Iraqi Army in 1991, followed by life as a refugee with two young children in Syria, was trying to find stability and security for her family in Albany, New York. Unfortunately, the sting operation intervened, and since Yassin's arrest in August, 2004, Zuhur has been quite depressed and more traumatized than ever. Then, in September 2005, when she was approximately six months pregnant with Dilnia, Yassin's bail was revoked and he has been incarcerated ever since, making Zuhur's situation even worse. One fortunate thing has been the constant support for the family from the Masjid As-Salam Mosque. Since their Imam, Yassin, was taken from them, the Mosque community has been taking care of his family, both financially and also by attending to the day-to-day needs of the children, such as transportation to and from school, etc.

In her letter to the Court, Cathy Callan writes:

"... I have come to know [Yassin's] family: Wife Zohour and four, rambunctious, fully Amercianized children, and see with dismay and sorrow the damage this entire affair has brought on this young family. Imagine, a young man, his wife and (at the time) three children fleeing the hardships and threats of their own native land, being taken in, with open arms mind you, by the land of the free and feeling that they can finally let go of their fears of imprisonment, torture and death, only to be singled out by our government and being flung blindly back into that dehumanizing state once again. Zuhour is not well; this entire episode has left her barely able to take care of her own family. She is fortunate only in that she has the mosque family to look after her and her children. Her children do not understand why their father is in prison, nor do they fully understand that he will not be coming home any time soon. Each day brings this family closer to the brink of lost hope and despair. ..." (Letter attached as Exhibit "A," at 16)

Similarly, May Saffar, a fellow Iraqi who has known Yassin and Zuhur since shortly after they arrived in Albany, writes:

"...[A]s a mother of three, my heart aches every time I see Aref's kids growing up away from their father. Aref is a very loving, caring and involved father. ... Zohour is still in a state of shock, extremely depressed. ...From my interaction with Aref's children, I also realized how intelligent these kids are. They asked me to bring them a chess game, and books. ...Zohour is still traumatized from the impact of the maltreatment of Saddam to the Kurds in Iraq, and the way the FBI raided their residence when her husband Yasen

was arrested...” (Letter attached as Exhibit “A,” at 18-19)

Both before his arrest, and while he was out on bail, Yassin divided his time between his duties at the Mosque, and spending time with his family, often taking the children to the library or for bike rides in Washington Park. The three older children miss him terribly and do not understand what happened to take their father from them. Yassin learned to write English so that he could correspond with them, but it is not the same as being with them. The baby, Dilnia, does not even really know him, which pains Yassin greatly.

During visits, Yassin always says that while he can handle incarceration himself, because his spiritual practice gives him the support he needs, the thing that tears him apart is feeling that he can do nothing to help his wife and children, that he is losing them, and cannot protect them from whatever may come. In fact, one of the main reasons he is writing his book is so that, if he does receive a lengthy sentence, at least the children can someday read the book to learn who their father is and where he, and they, came from.

### **Yassin’s Writings**

Since he has been learning to write English, Yassin, always a prolific writer, has been writing in his newest language, including his memoir, and various letters and poetry. Most of his writings have been edited by Stephen Downs because Yassin’s English is still pretty rough.

Yassin’s sense of humor is shown in the following quote from the acknowledgment to his book:

“... Mr. Steve used to complain that I had a habit of never spelling words in the same way twice. I insisted that I was very consistent in spelling - I always spelled words phonetically but the problem was I did not always pronounce them the same way twice. In this way we learned to adapt to each others styles and the work progressed.” (Excerpts from Yassin’s manuscript attached as Exhibit “B,” at 2)

## **Manuscript on Yassin's Life in Kurdistan**

### **“How Shall I Live Now”**

As Yassin's editor, Jeanne Finley put it:

“If there is a ‘theme’ to this book, it is that of the individual asking, ‘How shall I live now?’ ...[T]his man not only lives by moral principles, but has the strength of character and the ability to guide others to adhere to these principles as well....” (Letter attached as Exhibit “A,” at 5)

It is one thing to ask that question, “how shall I live,” in a moral sense, when one is living in relative comfort; it is quite another to live under a brutal dictatorship at times fleeing for your life, and *still and always ask that question*. Such is the character of Yassin Aref, and that comes through loud and clear from his manuscript.

### **Preface - Speaking Truth to Power**

In the Preface, Yassin Aref talks about how life in the East often moves from one disaster to the next brought about by “ignorant dictators and bloody leaders.” He then speaks of the need to tell the truth about such things, saying:

“The only way to change this situation and stop the corruption and ignorance, is for scholars to speak out, to tell the truth, and to never blindly approve what the rulers do. As Imam Ahmad said, “If scholars don’t speak the truth, and people don’t know it, how with the truth come out?” The Prophet Mohammad, may peace be upon him, said, “The best jihad is to say the truth to an unjust ruler”. Tell the truth to an unjust ruler; let him know ... how his unfairness causes his people to suffer; advise him and warn him about what disasters will flow if he does not stop the corruption and observe the law. ...” (Exhibit “B,” at 3)

### **Chapter 1 - Kurdistan Under Saddam**

In Chapter One, Yassin says that Kurdistan has been in the midst of conflict and war for his entire lifetime. In 1971, the year after his birth, Saddam began his campaign to remove the Kurds from the oil-rich city of Kirkuk, and when the Kurds resisted, the battles went on until



1991. Also, during the 1980s the war between Iran and Iraq went on and on, with both sides attacking the Kurds. In 1988 there was the gas attack on Halabja, and the Anfal campaign, where Saddam destroyed thousands of Kurdish villages, including Yassin's. In 1991 Saddam was driven out of much of Kurdistan but returned with a vengeance, forcing nearly the entire population to flee into the mountains and into Iran. Later, Saddam was gone but Kurdistan was left in ruins, and soon the various Kurdish groups began fighting among themselves.

### **Chapters 2 & 3 - Family in Kurdistan**

Yassin wrote about his family in these two chapters, beginning with his grandfather, Sheikh Aref, and his uncle, Sheikh SayGul, both of whom were famous imams. Regarding this, Yassin simply said:

“I have heard many stories about what these two Imams’ did and the miracles that seemed to accompany them, but because I cannot confirm the stories and I tend to believe that religious followers often exaggerate, I prefer not to mention these stories here.” (Exhibit “B,” at 7)

Yassin Aref writes that his father, who was illiterate, taught him discipline and taught him to pray by taking him to the mosque each day from the age of two. Yassin says:

“..That was how I first learned to pray but eventually prayer became the most important thing in my life. Those of us in the East survive because of prayer and because of the peace and tranquility that it brings to our heart to balance the survival actions that our mind is always demanding. (Now living in solitary confinement 23 hours a day, the inner strength of prayer has literally saved my life.)..” Exhibit “B,” at 8)

Regarding his mother, Yassin spoke of her hard work and suffering, both from her own undiagnosed medical problems, and from her pain at the death of her two youngest children, Salma and Jalal. Yassin said:

“I learned obedience and endurance from my father, but I learned suffering and patience from my mother. Women in the East work very hard and get little for it except suffering. I could see it in my mother’s face. She did all of the housework, raised 5

children, helped my father on the farm, milked the cows and sheep, and received no credit for anything. On top of everything, she was sick for the entire time I knew her, and her sickness was never diagnosed or treated. There were no doctors in the region at that time. She complained of rheumatism, and headache, which was so bad that when she went to take water from the well she did not put the pail on her head like most women, but carried it on her shoulder. In 1979 her seven year old daughter died. In 1981 her 5 year old son died, and something inside her died with them. Her mind was never the same after that. Whenever I saw her, there was a tear in her eye, and sometimes she would grab me and hug me and kiss me and cry for my dead sister and brother.

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Since I was one of the youngest, I was often alone with my mother, and in her loneliness she would pour out her story to me, placing my head on her leg and talking for hours, followed by hours of silent crying. My mother was a source of kindness and love that balanced the hardness and discipline in my father. ...

But strangely, my mother was an optimistic person. Her life had been nothing but hard work, problems, sadness, and abuse, and still she looked forward to a better future for her children - not for herself perhaps, but for her children. Now I see that she really only lived for us children. She took no pleasure for herself, and gave us everything that we needed first, before she took anything for herself. Since there was not enough to go around she was always shortchanging herself and so she became weaker and weaker. Now I feel guilty when I think of the number of times I was hungry and demanded food and she told me to take any food that I liked from her plate. But as a child, I did not understand that a person – a mother – would give up her life so that her children would live. I was so focused on surviving in the violence all around me that I did not understand that the person I loved most was slowly giving up her life for me.” Exhibit “B,” at 8 and 10)

Yassin also described how the family was left homeless when Saddam destroyed their village in 1988, and how they all had to move into one room of a friend’s house, at a time when Yassin’s father was becoming gravely ill. He then tells how they had to flee that refuge in 1991, but that his father was too sick to travel to the mountains, so Yassin took him and a sister to a cousin’s house in another city he thought would be safer. But the army went there too, and Yassin’s sister and cousin had to flee, leaving the father behind. When they returned, they found him dead. Yassin felt that he failed his father, and said:

“...[W]hen my cousin was finally able to return she found my father dead in the house. I never found out when or how he died, but he was all alone when it happened

with no one to comfort him in his suffering, unless the army killed him. That would have been a mercy because if the army did not kill him he must have died of dehydration or starvation without any care at all even to clean himself. Till today I feel guilty for what happened. In all the land at that time there were thousands of deaths and each death was a tragedy, but this was my father and I owed him a special responsibility to protect him as he had always protected me. Instead, I failed him.” (Exhibit “B,” at 12)

Yassin also told of his sisters and brothers, particularly his brothers Isaa and Ibrahim, both of whom studied at the Health Institute in the city of Sulaymaniyah. In 1987 Ibrahim joined the PUK (one of the Kurdish independence groups) and became a peshmerga doctor. The family had no contact with him from 1987 until 1991, not even knowing if he was alive. Yassin said:

“...In 1991, when the Kurdish uprising drove Saddam’s army temporarily out of Kurdistan, Ibrahim suddenly appeared one day, and we finally knew that he was safe. I was very proud of what Ibrahim did. The four years he lived with the peshmerga in the mountains and treated their wounds as their doctor, was the most dangerous and difficult period in the whole Kurdish revolution. I never believed that he was strong enough to do that.” (Exhibit “B,” at 13)

Also described was Yassin’s brother Mohsin, to whom he is very close - Yassin wrote:

“Mohsin was the only brother I really grew up with as a child. He was only one year older than I was and we did everything together. We were like twins. We cried together, laughed, ate, played, fought a lot, suffered and grew together, and shared the same parents, home and village. My father never called him Mohsin, but always called him “Mussa”, which means Moses.” (Exhibit “B,” at 14)

## **Chapter 4**

### **Iraqi Soldier**

Yassin tells several fascinating stories in this chapter, which show his strong belief in cross-cultural understanding and interaction as a way to peace, even in the middle of a war zone. There was an Iraqi army base up the hill from a tea shop where Yassin worked as a ten year old boy. Yassin noticed that this one soldier would come into the shop and stare at him, making him nervous. The soldier spoke only Arabic and Yassin at the time spoke only Kurdish. When Yassin

asked his cousin (the shop owner) to find out why the man was staring at him, the soldier told him that it was because Yassin looked exactly like his younger brother, whom he missed greatly. Yassin said he could be his new brother, and he and the soldier, Raid, became good friends. Raid would often bring Yassin canned army food, which he would then bring to his hungry family, and also started teaching him Arabic. Yassin said:

“...[T]hey did move Raid from that base, but I kept him in my heart and mind. He was my first Arabic teacher and my best and first non-Kurdish friend. He really was like my brother in a way – always taking care of me, and always worried about me. I never found out what happened to him except that they moved him to a battle front in the Iran – Iraq war. I hope Raid is still alive, and if he is I am sure that he still has my picture with him.” (Exhibit “B,” at 17)

### **Eclipse**

Another passage describes a lunar eclipse Yassin saw as a young child which terrified the entire village, who had never heard of such things and believed that God was punishing people for being sinful by destroying the world. Yassin and the others went to the mosque and prayed and prayed until the moon re-emerged. (Exhibit “B,” at 19-20) This story, along with showing the role of religion, shows how the people of Yassin’s village were largely separated from the modern world, though unfortunately not separated from modern warfare.

### **Wounded Peshmerga**

There is also a story from 1983 when there was nearby fighting between Saddam’s Army and the peshmerga, and suddenly a group of peshmerga showed up at the house of Yassin’s Uncle, Sheikh Abdul Qadr, who was the village leader. Yassin, 13 at the time, describes how the peshmerga asked Sheikh Abdul to help two of his wounded men. Sheikh Abdul brought the wounded men to his basement and the others fled. Very soon Saddam’s Army arrived and demanded to search the entire village. Sheikh Abdul invited them into his home, which they used

as headquarters while they searched all the *other* houses. Then he convinced them to stay for a barbecue, which took several hours to prepare. Yassin said:

“...The two army commanders said that they would also like to see the mosque. The Iraqi army was told in training that the Kurdish people were wild barbarians and communists who could be killed without violating Islam because the Kurds were not real Muslims. ...

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The half hour that was needed to start the barbecue became three hours. The army commanders were surprised to see how many villagers were serving food to the Iraqi army soldiers and being very friendly with them. Everyone was joking and having a good time. Probably the commanders were beginning to feel some guilt for having shot at these same villagers from helicopters almost every day, and for believing that the villagers were hostile ignorant communists who just wanted to kill Iraqi soldiers. It was obvious that the villagers did not hate Arabs as they had been told. So why was the army attacking the villagers every day? The commanders had also probably been told that there were Iranian soldiers being hidden in the village, and yet this obviously was not true. ... Perhaps the commanders and their soldiers began to doubt the truth of the propaganda they had been given about the Kurds, and began to even doubt why they were fighting the Kurds.

...Before they left, the two army commanders gave [Yassin's cousin] Samad and I their home addresses and promised to send us pictures back from Baghdad. So ended the great peshmerga raid. We really loved the two army commanders even as they loved us because we believed that after this day they would never again send their helicopters to bomb our village.

‘Maual Salama’, we told them, which is Arabic for ‘Peace be with you.’” (Exhibit “B,” at 21-22)

### **Politics**

Near the end of Chapter Four Yassin describes how, while attending school in Sulymania, he refused to join the Baath Party, thus risking expulsion or worse. But Yassin did not join any other political group either, stating that he felt they were all corrupt and destructive. Yassin said:

“How could I ever join the Baath party that every day killed so many Kurds and disrespected thousands more? But my answers to their questions were truthful – I did not like any other parties or politicians better. In my experience, politics has completely destroyed the Middle East and most Muslim people are victims of corrupt politicians. Most political groups switch every few years from Communist, to Nationalist, to Liberal, to Socialist, to Sunni, to Shiit. One day they work for Russia and the next day they work for America. They switch and then they fight one another even though they are all under

the same leadership. All of them claim they believe in Democracy but none of them had elected rulers and all claim to be the party of the majority. These corrupt, ineffectual, squabbling parties have cost us our liberty, and dignity – our childhood and education – our economy and jobs – our brotherhood and human relations – our health and future – our life and blood.” (Exhibit “B,” at 23-24)

## **Chapter 5**

### **Nawroz**

Nawroz is the Kurdish (and Persian) New Year, which occurs on March 21 (the spring equinox). Saddam forbid the celebration of Nawroz, and thus the holiday became a symbol of Kurdish independence, where Kurds would, if possible, light a bonfire on a mountain top and sing patriotic songs. Yassin tells the story of how, at the age of 12, he traveled from Sulymania, where surveillance prevented any open celebration, 100 miles by bus and foot, carrying an old tire on his shoulder, back to his village where there was usually a traditional gathering. When he finally arrived it was getting dark and there was thunderstorm. His mother told him there was no celebration that year because of the weather. Yassin wrote:

“I told her that I had to get to the top of the mountain to the festival. She told me that it was raining and that nobody was going to go. I begged her to please let me go before my father came home, because I knew that he would not let me go if he knew I had come back. At first she refused but eventually I wore her down and she agreed. Then I asked her for a bottle of gasoline. She knew why I needed it and so she just gave it to me. “I love you”, I told my mother and then I ran toward the mountain with my tire as fast as I could because I had less than an hour to sundown. I stopped at my friend’s house on the way, and he was very happy and surprised to see me, but I told him we have no time to talk now. Just tell all our friends that Yassin went to the mountains for Nawroz and that they should all come as soon as possible with fuel for the fire. It was still raining softly and I saw nobody else on the mountain.

As I climbed the mountain in my mind I could hear my brother laughing at me, telling me that he had been right - that I could not make the top in time. I forced myself to go faster so that my brother would be wrong. I began singing, “Amrozi sali to zaya bahar hatawo” – “Today is the New Year – the spring has come back!”. When I reached the top of the mountain there was nobody around. I put my tire at the very top and poured gasoline on it in the rain. Then I lit the tire on fire, and watched as the little flame spread a protective wall of warmth and light a few feet around me. I heard two persons coming!

Thank God I was not going to be alone. Then I heard two more - and then more - five, six, ten. People began to come from everywhere and the rain stopped. The fire burned higher and brighter. Everyone had brought something with him – wood, paper, clothes – and one of my friends had brought a big tape recorder with Kurdish patriotic songs on it. We all talked excitedly together about how we could not believe that Nawroz would pass this year without a celebration. One of my friends said he cried for three hours until his mother pointed to the top of the mountain and said, “For heavens sake stop crying. You will have your Nawroz . Come look. The fire has started on the mountain.” Another friend told me he was very sad and said that if Yassin was here there would be Nawroz even if it was snowing. Last year it had rained hard - not like now - and Yassin had started the fire even then.

Usually the Nawroz celebration takes one or two hours but this night nobody wanted to leave. We stayed on the mountain for three hours, even after our parents began calling us from the village to come down. It was one of the best nights of my life.” (Exhibit “B,” at 26)

### **Marxism and God**

Later in the chapter Yassin describes how his brother, Isaa, a Marxist, got Yassin to read Marx, which left him unimpressed. He tells the story of an old illiterate man who thought he believed in Marx until trapped by Saddam’s Army. Yassin said:

“In our area was a very old man, named Haji, who was peshmerga. Usually the name Haji means someone who has made a pilgrimage to Mecca, and in his case he actually had made a Hajj, but afterward went with peshmerga, stopped praying and became interested in Communism, except that he was illiterate. He knew nothing about it. Everyone made jokes with him, and asked him why he did not pray. He replied, “I am Martilininism” which meant that he was a Marxist/Leninist, except that he could not pronounce the word. One day the army surrounded the village and blocked all the escape routes. They started to bomb the village with helicopters and rockets and the peshmerga were trapped inside.

Haji asked his friend, “What shall we do?”

“Nothing. We are peshmerga and we should be ready to die”.

“Yes, but how can we get some help – who can save us”?

“We fight till we die or we can escape”.

“Before when I had any trouble I used to ask God to help me”, Haji said, “And I used to believe I got some support. Then you tell me that there is no God. So now who am I supposed to call on – Marts? (Marx) Marts!, Marts! Can you do anything for me? Can you hear me?

“No! Marx died a long time ago”.

“Listen. Lets go back to praying to God. Only he can save us”. And since that time, Haji started praying again.” (Exhibit “B,” at 28-29)

Yassin also read many other philosophers, and the question, for him and his friends, was always how could the Kurds get their freedom - through Marxism, Islam or something else...

Yassin said:

“I had many dialogues with peshmerga about Marx sometimes even for the whole night. And in school and in Chamchamal we discuss this all the time. The issue was whether the Kurdish liberation would come through a nationalistic movement like KDP, or through a Communist/Marxist revolution, or through Islam. Which one of these ideologies would spark the Kurdish revolution that would lead to freedom? The question was literally a matter of life and death. Pamphlets were written, books published, debates argued, all on this issue, each one responding to someone else’s arguments. I read as much as I could to prepare myself for this debate and took many notes. My sister thought that I was insane. Some times I stayed up the whole night reading a book and trying to understand the problem. Some books I read 10 times. We became very familiar with what Marx, Lenin, Engel, Darwin, Freud, Sartre, Rousseau, Nietzsche, Hegel, and all the others said. It was as though they were not just authors of books but were actually members of our village with whom we were having a dialogue. Some times we just joked about the absurdity of it all by telling stories.” (Exhibit “B,” at 29)

### **Young Sheikh**

In 1984, at the age of 14, Yassin returned to his village for the big holiday of Eed, but there was no one to lead prayers at the mosque. Yassin’s father was in despair, saying that his father’s (the famous imam) last wish was that prayer would always take place 5 times a day at the mosque. Yassin’s father rode to another village looking for an imam, but the man he sought was not there. He returned without hope, saying that the Eed prayer would have to be canceled, even though people were coming from other villages to celebrate. Yassin said:

“‘Daddy, you can do it’, I said.  
He looked at me like he wanted to slap me in the face.  
‘Why not Daddy’, I said. ‘You’ve done it hundreds of times. You know it’  
‘I’m not an Imam’  
‘You don’t have to be! If you only know the prayers it will be sufficient’  
‘So why don’t you do it’, he said to me, like he was making a joke.  
‘If you let me...’  
Father looked at me in surprise like he did not know what to say, but our neighbor immediately said, ‘Yassin can do it. He can read the Quran. He knows it.’



‘He’s just a kid’, said my father.

‘So what’?

‘People don’t like to pray behind a kid’.

‘So tell the people that if they don’t want to pray they don’t have to pray’

Eventually my father agreed, and an announcement was made at the mosque that we would have Eed prayers.

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I went ahead with the sermon. I told the people that we must separate culture from religion. We do many things because we think it is part of our faith but in reality it is just a custom, and something totally against Islam. Our great Imam Shafee used to say, ‘What sky will shade me and what earth will hide me if I say something is a matter of faith, and the Prophet Mohammad never said anything about it’.

Imam Shafee also said, ‘If my preaching is the opposite of the Prophet’s word, throw my word against the wall, and take the Prophets word to learn in school.’ It is easy enough to add many things to the faith which were never there to begin with. Religion should be simple, clear and easy. Let us keep it simple, clear, and easy and do not make it hard upon ourselves. God wants us to be thankful for what we have been given, helpful to our brothers and sisters, respectful to our neighbors; generous to the poor; merciful to the children; soft to our wives; clean of heart, and always truthful. God loves you. This is the faith that we should teach to our children and take for ourselves as well.” (Exhibit “B,” at 30-31)

## **Chapter 6**

### **Freeing Chamchamal**

In 1991 after the first Gulf War, Saddam was forced to pull many of his troops out of Kurdistan to deal with a Shiite uprising in the south. Yassin said:

“The confidence of the remaining troops was shaken. You could just feel it in the air. They kept out of sight and did not try to intimidate people the way they used to. The peshmerga attacks became stronger and forced Saddam’s forces into the cities. For the first time we felt that Saddam’s troops were more afraid than we were.” (Exhibit “B,” at 36)

In early March, Yassin, living in the city of Chamchamal at the time, woke up one day and told his brother, Mohsin, that he was planning to start a demonstration like one that had occurred in the neighboring city of Rania. Mohsin tried to dissuade him, saying it was too dangerous, but Yassin insisted, saying that the time was right. Yassin says:

“I went to get some of my friends. One of them was communist, one was Kurdish [nationalist], one was Iraqi nationalist, and I was religious. None of us knew anything about democracy except for the name, but we came together for one goal – to free Chamchamal from the government’s troops.” (Exhibit “B,” at 36-37)

Yassin and his friends then tried to make the police and Army believe that they were part of a peshmerga force that had come to liberate the City, rather than just students. Yassin went to the Mosque and made an announcement on the loudspeaker:

““In the name of God and on behalf of the Kurdish front I want to tell you that we, the peshmergas, are here on the streets and we want you to come out of your houses and come with us. It is the time to shout:

‘Death to dictators and their bloody regimes!

Long live Freedom!

Long live Kurdistan!

Long live the Peshmergas!’

‘To our respected soldiers in the Army;

To our beloved brothers in the Police Force;

To our respected government workers.;

It has been decided that whoever today helps the peshmergas or even sits at home and does not fight us, will not be asked about his past. The Past is over!! We are all Kurds now and we are all brothers and we are all Peshmergas.

Come help us and prove today that you are a Kurd, and that you are a Peshmerga. You all like freedom and you don’t want another Halabja, or another ANFAL again! It has been decided. No revenge is going to take place in Kurdistan.

Long live the Kurds! Long live Kurdistan! Long live Freedom!’” (Exhibit “B,” at 37-38)

Yassin then described what happened next:

“When I ended and went back to my friends, the City suddenly seemed to explode. Gun fire sounded everywhere! Kurdish nationalist songs were sung. People came out of their houses singing and clapping. I told my friends now we have hundreds of allies. Keep singing and firing in the air.

A crowd tore down the statue of Saddam and surrounded the police station. It became bigger and bigger. After about 2 or 3 hours the government realized that we were not peshmerga – just students, and they brought in their special forces and began firing on us. My brother Mohsin was shot in the leg. Some people took him and hid him in a nearby home. We all ran away and hid ourselves. Mohsin and I stayed in a basement under ground for 40 hours and I took care of him because he lost so much blood. ...

On March 9, after 40 hours of hiding, we tried again to rouse the City. This time the Peshmergas really came and in a few hours the City was completely free.

‘Come out’, I told Mohsin. ‘No more hiding ourselves, no more fear. Now it is our City. We are free!’ He did not believe me. We took Mohsin to the hospital.

The liberation of Chamcamal was the most wonderful moment in my life. It was hard to believe how fast a criminal bloody regime could collapse and disappear. There was a smile on every face. People everywhere congratulated us. Kurdish nationalist songs were sung so loudly the City was shaking. Now we can test freedom. Now we have our own city. Long live Freedom!!” (Exhibit “B,” at 38)

### **Fleeing Saddam**

Unfortunately, a few months later Saddam’s Army returned with a vengeance and everyone in Chamchamal, and almost the whole of Kurdistan was forced to flee into the mountains and seek refuge at the Iranian border. Yassin describes that desperate journey:

“We walked continuously 15 hours a day for the next 9 days and nights most of the time in the rain, until we reached the Iranian border. It was the longest hardest journey I ever had to make. We were young and unencumbered with family or possessions. We passed thousands of families struggling slowly along the road, crying for help, begging for food, asking for directions or news of their relatives. We helped where we could, and shared what we had, but it was overwhelming and in the end we had to save ourselves from the advancing army because they would certainly have killed young men like ourselves first. It is almost impossible to describe the scenes of complete chaos and devastation. It was like the flood in New Orleans except that the planes flying overhead were shooting at us rather than trying to help, and we were climbing through wild mountains rather than struggling through a city. At one point we saw a woman in complete despair take her baby and throw it over a cliff. One of my friends climbed down the cliff to try and save the baby but he returned to say that it was dead.” (Exhibit “B,” at 40)

When they reached the top of the mountain and looked down to the river which was the border with Iran, they were horrified to discover tens of thousands of refugees, unable to cross into Iran, mostly just sitting in the mud. The river was in flood, there was no bridge, and the Iranian police were not giving everyone permission to cross anyway. Yassin said:

“Fortunately, the people on the Iranian side of the river were Kurds and they responded to our misery. They managed to throw a rope across the river and with it, we were able to pull bags of food, and sheltering material over the water from the Iranian side. Slowly a series of shanty towns and tent cities sprang up all along the border as people tried to build shelters from the rain and construct places where they could cook

food. The whole border was like this but we could only see our small area, where we would have starved, but for the compassion of the Kurds on the Iranian side.” (Exhibit “B,” at 40)

After about two weeks Yassin’s group was given permission to cross into Iran, and they remained there for many weeks until it was safe to return. Yassin described reuniting with his family:

“Eventually we heard that our families were in Mariwan, Iran. When we arrived in Mariwan we were told that they had now gone back to Penjaween on the Iraqi side of the border. In Penjaween, I finally found my brother Mohsin. Everyone was afraid that I had died defending the City of Chamchamal and they were very glad to see me back. Most of the rest of the family was safe but nobody knew what happened to my Dad or my sister. We stayed in Penjaween until we were sure that the UN would keep Saddam’s forces south of the 36 parallel (the no fly zone). After that we returned to find that our sister was safe but father had died.” (Exhibit “B,” at 41)

### **Kurdistan in Ruins**

When Yassin and his family returned to Chamchamal, much had been destroyed but they were still very hopeful at first because Saddam was finally really gone. They began efforts to rebuild but before long the different Kurdish parties began fighting among themselves and everything ground to a halt. Yassin describes that time:

“When we returned home we found much of Kurdistan in ruins. But Kurdish political parties moved in to fill the governmental vacuum left by Saddam’s departure, and it appeared that we were finally going to be ruled by our own people – Kurdistan would be self governing. We were all so happy that everybody began to help each other to rebuild the country. ...

In Chamchamal a group of us, headed by Mamost Nori Rahim, decided to help reopen the schools. We had to do it quickly before the teachers became discouraged and left to find jobs somewhere else. 5 teachers, one Imam, Gareeb, and I worked with hundreds of student volunteers to collect enough money from the citizens to repair the broken windows and equipment in the schools. We went door to door, store to store, to ask for donations and materials so we could make repairs and actually start to pay the teachers, if not a salary, at least their expenses. We did a great job. Within a relatively short time 80% of the schools were reopened and most of the teacher came back voluntarily and were willing to work without salary for just their expenses.

Elections were held to select a new Kurdish government and two parties emerged

as the dominant political organizations – the KDP and the PUK. But instead of working together to rebuild the country, the two parties began to disagree and finally started fighting. Everything collapsed. All our sacrifices for the last 50 years seemed to be in vain. Instead of rebuilding from Halabja and ANFAL, instead of living together in freedom, Kurds began to kill Kurds once again. As soon as we showed our weakness, our neighbors moved to take advantage of it. The Iraqi government withdrew all government services and put a complete embargo on Kurdistan. Iran began to fund a Kurdish opposition party. Turkey began to fund another Kurdish opposition party. Each Kurdish party fought with the other to benefit the interests of Iran and Turkey. Money quickly ran out. Many schools closed because there were no funds to pay the teachers. The Courts and legal process came to a halt. The rule of the gun returned. Hospitals and post offices closed. Electricity stopped because no salary was paid to the workers at the power plant. Militias funded by different political parties fought so intently that some people began to wish that Saddam would return to restore order – at least with Saddam we had food, fuel, schools, electricity. Now we had nothing – not even freedom.

More and more people began to see that there was no future in education. Most educated people were jobless and poor. Political parties spent their money on their militias, not on schools or hospitals. Children had to work instead of going to school. Students began to leave school, take up guns and fight with their party's militia. Young people were just waiting for the chance to escape Kurdistan and go to Europe or America. It was hard to stop the people from leaving. There was no sign that the future would improve. I used to argue all the time with people about this situation. I said, "It is because our parents are illiterate. If we do not study, our children's lives will never get better." They would respond, "Who cares about the future. We just want enough bread to keep us alive today". Really I did not have a good response to that.

After I came to America, I saw a bumper sticker that said, "If you think education is expensive, try ignorance". It really caught my attention and I preached about that at Friday prayer. I said that the Muslims are paying for 800 years of ignorance. It is costing us our freedom and dignity among the nations of the world, but even worse, it is costing us hundreds of thousands of lives. We have to understand that and educate our children. If we fail, our children will not even have the future that we wanted and were denied." (Exhibit "B," at 41-42)

At first Yassin tried to dissuade people from leaving, but there just seemed to be no future in Kurdistan under the circumstances. Yassin himself worked in Sulymania as a porter to raise money to travel to Syria to try to fulfil his dream of a college education. The book ends at that point.

In approximately 1994 Yassin Aref married his wife, Zuhur, and the couple decided that they had no choice but to leave Kurdistan and seek a future elsewhere. They moved to Syria

where they were granted refugee status under a UN program. Yassin worked as a gardener and caretaker for a Syrian businessman, and he and Zuhur began raising their family there. Eventually he had to leave that job because his boss' wife tried to force Zuhur to work for her. After a long difficult job search, Yassin was hired at the IMK Office in Damascus, where he worked for 10-11 months, until they family was told they could come to the United States in 1999. The family arrived in Albany, New York in October, 1999, shortly after their third child, Kocher, was born.



Photo of Yassin from 1998 or early 1999, taken in Syria at the estate where he was working as a gardener and caretaker.

## **New Years Letter**

After the conviction, many people were upset and began writing to Yassin and trying to support him, as described below. Yassin wrote a New Years Letter from his jail cell to the people who had been supporting him. When I first heard he had done this, I thought the letter would relate to his case, and the efforts to help him. Instead, Yassin barely mentioned the case and basically wrote a sermon, perhaps like those he used to give at the Friday prayers at the Mosque. He discussed global warming, HIV and other problems, and asked people to follow the examples of Moses, Jesus and Mohammed, and look at all of humanity as one family. He also asked that same question which was the theme of his book: how shall I live. The letter is attached as Exhibit “C” and a portion of it is quoted here:

“...We need to look at all people as though they were our family. As the Prophet Mohammad said, people in this life can be compared with travelers on a ship in which some of the travelers took their places in the upper parts, and some on the bottom. When those on the bottom need water they will say to the people on the top, do you mind if we make a hole down here so we can get some water to drink. If the people on the top don't stop them from acting foolishly, the ship will fill up with water and all will drown. Those on top need to draw water and pass it down to the people on the bottom so that all may be refreshed and saved.

We must take responsibility as human beings to feel for those who are suffering, and to work for justice and peace in order to build our universe.

We should feel compassion for anyone who dies from AIDS or HIV in Africa and work to see that medicine is made available in order to build our universe.

We should feel concern for those who lost their houses and are refugees because of war or earthquakes or floods, and we should work to see that relief is provided in order to build our universe.

We should help children who don't have a chance to study and educate themselves and we should work to improve their future in order to build our universe

All of this is exactly what Moses and Jesus and Mohammad were teaching about. If we do not care about this, and we do nothing about it, we must ask ourselves, ‘Who are we? Why do we live? What does it mean to be a human being’?

We all live on one planet. Corruption anywhere will affect other parts of the world as well. Global warming and bird flu are just waiting to wake us up! Waiting for other people to provide leadership is useless. Each of us must say, 'I will start. I will set an example. Let me remind people – let me warn them – so that if they will not do their duty at least I did mine. I will do it for myself, my children, my country, and my planet.'

We all know that it is more fun to give than to receive. So we must be happy when we work for the benefit of others. We must be ready to sacrifice our time, be willing to stand for peace and justice, and have the courage to speak out. I believe that all of you are doing this. That is why I am really so thankful for all of you. I am thankful not because you are defending me and supporting my family, but because you are standing for justice and defending your nation's values. You are standing for a better future and a peaceful planet...." (Exhibit "C," at 1-2)

### **Poetry**

Yassin has written many poems, both while he was in Kurdistan and Syria, and while he has been in the United States. A few of his poems are interspersed in his book, and are included in Exhibit "B," at 4-5, 27 and 39. He also wrote a poem about Martin Luther King, which May Saffar was invited to read at the Martin Luther King Day Commemoration in Saratoga on January 15, 2007. This is the poem, as edited by Stephen Downs - it reflects Yassin's vision of the world:

#### **MARTIN LUTHER KING**

History is full of kings,  
Who sought power,  
And all that power brings -  
Palaces, food, women,  
Drinking and pleasure.

I do not love these kings,  
And put my faith only  
In the king of heaven.  
While on earth, humans need  
A leader to serve - not enslave.

Martin Luther King was different -  
He was a real king - a leader who



Served, and taught, and gave, and never  
Took favors from others,  
Or sought power for himself.

He was a victim of racism,  
But still he kept faith  
In his vision that all people  
Are equal as brothers  
Having the same father.

He had a dream to one day  
See them all gathered together  
Living free with dignity  
Supporting one another  
As equals under the law  
Now and forever!

I love now two kings  
The great King in heaven  
And my brother Martin Luther  
Who struggled on earth to bring  
God's justice and peace to all.

## **OTHER ASPECTS OF THE CASE**

### **Lack of Proof and Troubling Nature of Sting Operation**

Without re-arguing the Rule 29/33 motions, it is submitted that despite the jury's verdict, there was a compelling lack of proof in this case. Moreover, it is always troubling when a sting operation is used to target those who were not *already* violating any laws, especially when that targeting occurs in a climate of great fear and is directed at a particularly vulnerable group.

### **Public Concern**

Throughout this case, but especially since the convictions, many local people, Muslims and non-Muslims, were upset by various aspects of the case, including nature of the sting operation, the fact that it was targeting a religious leader, the secret evidence, the language and cultural barriers, etc. People who knew Yassin did not believe that he was guilty of these crimes,

and many who came to know him, and know of him, felt the same way. In addition to the many letters to the Court, included herein, there have been a variety of other ways in which people have expressed themselves.

### **Opinion Columns**

Two well-known local newspaper columnists, Carl Strock of the Daily Gazette, and Fred LeBrun of the Times Union, wrote columns about the case during and after the trial. Those columns are attached as Exhibit “D,” at 1-9. Fred LeBrun’s most recent column, published on January 12, 2007, states:

“Someday we’ll look back on the present national paranoia over terrorism and the excesses done in its name with the same national embarrassment that Americans feel for Sen. Joe McCarthy’s communist witch hunts of the 1950s and our appalling treatment of Japanese-Americans during World War II. ...

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This case should never have seen a courtroom. Because once the mesmerizing ingredients were brought into a trial - the convoluted and selective translations, a glib informant avoiding 15 years in jail and the exploitation of our fears and anxieties over global terrorism by prosecutors, - the results were predictable. The trial had remarkably little to do with Aref and Hossain. This was not our federal court system’s finest hour, or the FBI’s either.

...[T]hat still begs the question of why the feds pursued this prosecution with such zealotry, even after recognizing as they must have that Aref and Hossain never posed any threat to our national security.

It seems there was an ulterior motive, also reflective of our times. Sending a chilling message through the American immigrant Muslim community.

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Well, according to the Muslim Solidarity Committee, a local support group for Aref and Hossain, the government has been dazzlingly successful in spreading fear and distrust in the local immigrant Muslim community. However, that would be a fear of the FBI and our government.

Looking up from a warm seat somewhere, Senator Joe must be viewing all this with a knowing smile.” (Exhibit “D,” at 1-2)

Carl Strock, who attended all or nearly all of the trial, has written several columns since the verdict, and also has met both defendants and corresponded with Yassin Aref. His first

column, published on October 12, 2006, stated:

“I hang my head in shame. Yassin Aref and Mohammed Hossain, two local Muslim men who were minding their own business until the FBI came into their lives, have been convicted of supporting terrorism, of all things.

Convicted by a jury of my peers. Not necessarily *their* peers, but *my* peers, meaning ordinary middle-class people from upstate New York, who sat patiently for 12 days and listened to evidence that in my opinion was an embarrassment to our country, or should have been an embarrassment to our country, and then sat for another 3 ½ days and discussed that evidence before arriving at their verdict.

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The bizarre thing is that the two, far from being terrorists or terrorist sympathizers, are not even radicals within the Islamic universe. They are altogether moderate. ...

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...Of course I wanted to talk to the jurors after they were discharged, to ask them what went through their heads, and I pursued them out through the parking garage next to the courthouse, down off Broadway in Albany, for that purpose, but they wouldn't talk. They got in their cars and drive off, so I got no satisfaction in that department.

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What do you think will become of their wives and children? How will they support themselves? How will they live? Think about it. Think about yourself in that position. Living in a foreign land, trying to function in a foreign language, facing what they face.

I have spent a little time with the two men, and they both strike me as decent - Aref, religious, thoughtful and scholarly, Hossain, self-effacing, unsophisticated, hard-working.

They came to this country full of hopes, and they broke no laws until the FBI very elaborately led them to do so, if you think they broke laws at all, which I really don't.

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I would like to say something to them, if by chance they get to read this in their isolation cells in the Rensselaer County Jail, where they await sentencing.

Yassin and Mohammed: I hope you have the strength to endure what you now face. I suspect you do, that you will find the strength in your religious faith, a faith I do not share, but that is obviously a large part of your lives.

The time may come when Congress will pass a resolution apologizing to you and others like you who got swept up in the fear that followed 9/11, just as it passed a resolution apologizing to the Japanese-Americans who got swept up in the fear that followed Pearl Harbor, but that will probably come too late to do you any practical good. Your lives will have inched away by then, and your children will be long grown.

I hope they grow up able not to hate America, just as I hope you too are able not to hate America.

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I am very sorry for you and your families, and as presumptuous as it may be, I

apologize to you on behalf of my country.  
Good luck.” (Exhibit “D,” at 5-6)

Carl Strock wrote another column, published on November 7, 2006, which discusses a letter he received from Yassin - the column stated:

“...I should mention, by the way, that I received a letter from Aref, the more intellectual of the two victims, in response to a column I wrote in which I said I hung my head in shame, apologized on behalf of my country, wished the two of them luck and mentioned in passing that I did not share their faith. ...

I quote exactly, so please allow for Aref’s imperfect English, which is his third language” ‘You wrote the faith you are not sharing it with me but you are! Speaking the truth and supporting it. Care about your family and mercy on weak, sick and children. Hate unjust and tricky. Believe me that exactly my faith so I am going to share this faith with you. Only I will believe in God to it!’

That’s the kind of guy he is. [A]nd that’s the kind of guy our government is going to put in prison for the rest of his life, leaving his family in the lurch.

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Meanwhile, thanks sincerely to the people who came together to form the Muslim Defense Committee and establish the Aref-Hossain Family Support Fund. ‘Keep your head high,’ Aref urged me in his letter, and I urge you the same.” (Exhibit “D,” at 6-7)

### **Fox 23 Program**

On October 22, 2007, Fox 23 TV ran a 30 minutes interview with Dr. Shamshad Ahmad, President of the Masjid-As-Salam Mosque. The first half of the show dealt with Dr. Ahmad’s background, and that of the Mosque, and in the remainder he discussed this case, and his strong belief that Yassin Aref was innocent, and would never support terrorism or violate any laws.

### **Letters to the Editor**

Many people have written letters to the editor, and copies of some of those letters, to the Times Union, are included in Exhibit “D,” at 8-10(A).

### **Muslim Solidarity Committee**

After the verdict a local group of Muslims and non-Muslims formed the Muslim Solidarity Committee (originally called the Muslim Defense Committee) in order to support

Yassin Aref, Mohammed Hossain and their families, and also to support and get to know the local Muslim community. Carl Strock interviewed Cathy Callan, one of the group's founders, who stated, "The big thing we're trying to do is organize events on a regular basis to bring the regular community in to meet and get to know the families at the mosque, so the mystique is kind of eradicated. These are our neighbors." (Exhibit "D," at 6-7)

### **Petition**

The Muslim Solidarity Committee (MSC) put together a petition on behalf of Yassin Aref and Mohammed Hossain, which said:

"We the undersigned believe that there are many serious questions about whether Yassin Aref and Mohammed Hossain were guilty of any of the offenses they were charged with. We especially note the language challenges presented to these men during the sting operation and the disputed translations of the recordings. We also believe that they jury may have been caught up in the current climate of fear of Muslims are the mention of 'classified evidence.' Under these circumstances they may have decided on a guilty verdict more out of a fear that the men *might* be guilty rather than a real belief that they were in fact guilty beyond a reasonable doubt.

We call upon the judge to look very carefully at all of these issues when deciding whether to vacate any of the convictions or to grant a new trial.

In addition, because both Mohammed Hossain and Yassin Aref are hard-working religious men devoted to their families, have never been in trouble with the law in the past, and are *not* terrorists, we also call upon the judge to exercise his utmost leniency when it comes to sentencing." (Petition, which was made part of the record)

On January 7, 2007 the Muslim Solidarity Committee delivered the petitions to the Court, and also provided copies to this office and to the office of Kevin Luibrand, Esq. At that time there were 445 signatures, which included 255 from an online petition, and 190 from paper petitions (and which included a small handful of people who signed both or accidentally signed the online petition twice). The petitions are included in the record of this case, and therefore are not attached herein. The online-petitions - whose signatures were overwhelmingly local, though they did include a few people from other cities and states - included a space for comments, and

many people took advantage of that opportunity. Here are a just a couple of those comments:

Morgan Desmond of Schenectady wrote, “Things have gone very, very wrong here. Please decide in a way that restores the true meaning of American values.” (Online petition signature No. 176)

Suzanne M. Fromtling, also of Schenectady, wrote:

“Dear Judge McAvoy - I write to you at this late date praying you’ll be as blessed to see the truth within this case as you have been time and time again in your position of trust and judicial ethics. ...From everything I know about this case, these men pose no threat or danger to anyone, and the injustice ... will only lead to more mistrust of America and our concept of justice... Please restore our faith in the American judicial system by exercising leniency in this case. ...” (Online petition signature No. 196)

The paper petitions included the signatures of many non-Muslims, but also included page after page of signatures by local Muslims, many of whom are members of the Masjid As-Salaam Mosque, and who signed the petition when it was posted there. They also included a lot of people who signed the petition when it was posted at the Little Italy Pizzeria, owned by Mohammed Hossain and his wife.

Since January 7, at least 182 more people have signed the petition, 93 online and 89 on the paper petition. That makes a total of 627 people who have signed this petition since approximately December, 2006.

### **Family Fund**

Another project of the MSC was to set up the Aref/Hossain Family Fund, in order to raise money to support the families of Yassin Aref and Mohammed Hossain. The two families include ten children who range in age from 1 to 13. Thus far the Fund has raised over \$10,000, from over 175 local people, which is being used for housing and other needs of the families.

## **Community Events and Outreach**

The MSC has also organized several community events, many of which focused on developing more understanding between local Muslims and non-Muslims. On December 3, 2006, the MSC sponsored a potluck dinner and gathering at the Islamic Center of the Capital District, which was attended by approximately 60 people. Then on January 2, 2007 Shamshad Ahmad, President of the Masjid As-Salam Mosque, and an MSC member, organized a dinner to thank the MSC for its efforts on behalf of the Mosque - that event was likewise well-attended.

On January 11, 2007, several MSC members met with the Editorial Board of the Times Union to discuss the case. MSC members have also spoken at various local community events, and have staffed literature tables at many other community events. In addition, the MSC has a website<sup>3</sup> and has been holding vigils in front of the Courthouse every Tuesday and Thursday. There are at least three public forums regarding the case which are being organized to take place this month.

### **Photo in Exhibit**

Last fall Schenectady resident Dave Capone, who had attended most of the trial in this case (and who wrote a letter to the Court), participated in a photography workshop with Zoeann Murphy of unseenamerica, a group which exhibits photographs of subjects which often go unnoticed. Mr. Capone's subject for the workshop was the families involved in this case. One of his photographs, of the children of Yassin Aref (which is included herein at Page 5), was shown as part of an unseenamerica Exhibit at City Hall in Schenectady, and also in a one-night-only gallery tour in Albany. The Albany show was featured in a Times Union article, which led with a

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<sup>3</sup>[www.nepajac.org/Aref&Hossain.htm](http://www.nepajac.org/Aref&Hossain.htm)

description of the photo of the Aref children. (1/17/07 Times Union article, attached as Exhibit “D,” at 11)

### **Documentaries**

Two documentaries are also being made about this case. PBS is doing one as part of their series entitled “America at the Crossroads,” which will air nationally in April, 2007. The other is a longer term effort by Ellie Bernstein, a woman who has made two previous documentaries, and who is moving to Albany to work on this project.

### **FACTORS UNDER 18 USC 3553(a)**

Section 3553(a) directs sentencing courts to consider (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to: (A) reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;(B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (3) the kinds of sentences available; (4) the sentencing range established by the guidelines; (5) any pertinent policy statements issued by the Sentencing Commission; (6) the need to avoid unwanted sentencing disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense.

Section 3553(a) also requires courts to “impose a sentence sufficient, *but not greater than necessary*, to comply with the purposes set forth in paragraph 2.” (Emphasis added). *United States v. Ministro-Tapia*, 470 F.3d 137, 141 (2<sup>nd</sup> Cir. 2006); *United States v. Castillo*, 460 F.3d



337, 354.

**Nature and Circumstances of the Offense/ History and Characteristics of the Defendant.**

The History and Characteristics of the Defendant are described in the first 24 pages of this Memorandum. Suffice to say that not only does Mr. Aref have absolutely no criminal history, he has led an exemplary life, and, despite living through incredibly difficult circumstances in Kurdistan, he is a devoted religious leader who is an inspiration to many, both Muslims and non-Muslims.

As to the nature and circumstances of the offense, it was a sting operation where there was an attempt by the government to entice Mr. Aref into committing several offenses which carry very high guidelines sentences. The jury acquitted Mr. Aref of 20 of the 30 counts with which he was charged, convicting him only for the dates of July 1, 2004 and August 3, 2004 (as well as the false statement charged in Count 30). Mr. Aref submits that he is innocent as to all counts charged, and has been vigorously pursuing post-conviction remedies.

**To Reflect the Seriousness of the Offense, to Promote Respect for the law, and to Provide Just Punishment for the Offense.**

With regard to this factor, the Court should consider the more than 45 letters received in support of Yassin Aref, which urge leniency, and many of which conclude that only great leniency would promote respect for the law in this case. For example, Sarah Birn, Esq., who attended the trial, writes:

“...The terrorists are weakened when our justice system works the way it is supposed to. Granting leniency in sentencing the Imam is just, and it is vital to show the integrity of our judicial system...” (Exhibit “A,” at 12)

The entire 12 member Peace and Justice Commission of the Albany Roman Catholic

Diocese write, "...We pray that Yassin Aref and Mohammed Hossain will be returned to their families and the community, which will hold up for all to see the values of American justice..."

(Exhibit "A," at 17)

**To Afford Adequate Deterrence to Criminal Conduct.**

It is submitted that this factor is not a concern. Though Mr. Pericak has implied in public statements that if people want to avoid being prosecuted in a sting operation, they have a duty to inform the authorities whenever they hear anything suspicious, it is submitted that such an alleged duty is contrary to the American system of justice.

**To Protect the Public from Further Crimes of the Defendant.**

Again, based on everything argued herein, and on the letters received, it is submitted that Mr. Aref never would have committed any crime had the government informant not entered his life (and it is argued that he is innocent anyway), and never will in the future. In any event, it is quite clear that if any conviction is upheld, and perhaps even if no conviction is upheld, Mr. Aref will be deported.

**To Provide the Defendant with Needed Educational or Vocational Training, Medical Care or other Correctional Treatment in the Most Effective Manner.**

This is not relevant.

**The Kinds of Sentences Available.**

After *Booker*, almost any sentence is available, but the question is what sentence is *reasonable*. It is submitted that taking into account all the facts and circumstances, a sentence *much* lower than the Guidelines range is the only reasonable and just result.

### **The Sentencing Range Established by the Guidelines.**

The Guidelines range in this case is, due solely to the nature of the sting operation engineered by the government, 360 months to life.

### **Any Pertinent Policy Statements Issued by the Sentencing Commission .**

It is submitted that no specific policy statements supports the imposition of a particular sentence in this case.

### **The Need to Avoid Unwanted Sentencing Disparities Among Defendants with Similar Records Who have been Found Guilty of Similar Conduct.**

This is not relevant, as there are few or no cases where the defendant in a terror sting operation was acquitted of most of the charges, and then convicted of a small subset of them in a very questionable manner.

### **The Need to Provide Restitution to any Victims of the Offense.**

This is not relevant.

### **Summary**

It is submitted that taking into account all the facts and circumstances discussed above, the above factors support a non-guidelines sentence *much* lower than the guidelines range.

### **GUIDELINES SENTENCE**

Although the sentencing guidelines are no longer mandatory, the Court is required to consider them before imposing sentence. However, the Second Circuit has *not* held that the Guidelines are presumptively reasonable, and has stated that the Guidelines do not fully incorporate the factors contained in 18 USC 3553(a). *See United States v. Fernandez*, 443 F.3d 19 (2<sup>nd</sup> Cir. 2006).

As stated above and in the PSI, the Guidelines range in this case is, due solely to the nature of the sting operation engineered by the government, 360 months to life. This does not take into account *any* of the factors discussed above, nor does it take into account the fact that Mr. Aref has absolutely no criminal history. (Because of the nature of the conviction, the criminal history category is automatically elevated to VI..)

While it is argued herein that a very lenient non-guidelines sentence is the only one which would provide any justice in this case, there are also factors which support a downward departure under the Guidelines.

### **Combination of Factors**

The Commentary to U.S.S.G. section 5K2.0 notes that the sentencing commission hasn't foreclosed the possibility that a combination of factors which, although individually insufficient to warrant a departure, would justify a departure when they remove a case from the "heartland" cases covered by the guidelines. See *Koon v. United States*, 518 U.S. 81, 116 S. Ct. 2035 (1996).

Some additional examples of downward departures based on a combination of factors include the following cases within this, and other, circuits. *United States v. Blake*, 89 F. Supp. 2d 328 (E.D.N.Y. 2000) (here a *21 level* departure was granted, based on a combination of factors); *United States v. Gamez*, 1 F. Supp. 2d 176 (E.D.N.Y. 1998) (10 level departure based on a combination of factors); *United States v. Blackwell*, 897 F. Supp. 586 (D.C. Cir 1995).

There are several such factors herein, including the lack of criminal history, Mr. Aref's extraordinary family responsibilities (he is clearly needed to take care of his children as his wife, Zuhur, is very traumatized and depressed), his role as an Imam, where he is also needed, his history of hard work in low-paying jobs (such as cleaning toilets at Albany Medical Center), and

his other achievements, such as his having obtained a college degree under circumstances when most people would not have even tried. A very significant downward departure is supported by those factors, and by the others discussed above.

## **CONCLUSION**

In conclusion, it is submitted that this case is a difficult one, and raises a lot of troubling issues, which should very carefully taken into consideration. These include the nature of the sting operation, targeting two individuals who had never been in any trouble before, and who clearly were not involved in any illegal activity at the time the informant entered their lives. In addition, there were many thorny issues involving language, culture and religion, which probably confused everyone involved, including the lawyers, the defendants, the witnesses, and the jury. Moreover, the case occurred in a post-911 climate of great fear when many ordinary Americans had become suspicious of Muslims. It is submitted that at some point, as stated by local newspaper columnists Fred LeBrun and Carl Strock, who are quite familiar with the case and all the evidence presented, history will recognize that this case never should have happened, and that the two defendants were the victims of an unfortunate over-reaction to legitimate fears. The question now is, how long will that take?

Several people expressed these concerns eloquently in their letters to the Court. James Fulmer, a local carpenter volunteering his time to work on the apartments of the Aref and Hossain families, stated:

“...I want [the families] to know that America is compassionate and conscientious. I’m afraid they’ve lost faith in these concepts as a result of the FBI sting against their fathers and husbands. It seems that in our country’s intense desire for security, these two men (and their families) have also become victims... Can we show the Muslim community and the world that we are not driven by fear, that we are motivated by the ideals that brought the families here?...” (Exhibit “A,” at 10-10[A])

Sarah Birn, a local attorney who attended the trial, stated:

“...The horrors of terrorism are not lost on me: my daughter was in NYC on 9/11 and I appreciate the government’s burden and duty. I urge leniency because I heard no evidence of the Imam’s guilt of the conspiracies charged and no evidence that he could even sympathize with terrorism. The other shoe just never dropped. ... More importantly for sentencing purposes, trial testimony, the secretly recorded conversations and the Imam’s lectures in Kurdistan revealed the Imam as a sincerely devout, non-political person dedicated to performing his religious duties with honesty, integrity, and an understanding of the pastoral guidance needed by Muslims living in America...Our government created the crime for which the Imam and his family were torn apart. The jury found him not guilty of the charges based on the only which could have linked him to a terrorist plot. Proved cultural and linguistic misunderstandings in the case were only the tip of the iceberg in which language and customs barriers confused the Imam himself, the government and, most likely, the jury. ...That leaves the onus on the Court to grant the Imam the justice he deserved. ...” (Exhibit “A,” at 11-12)

The 12 member Peace and Justice Commission of the Albany Roman Catholic Diocese wrote:

“...We believe that the jury may have been caught up in the current climate of fear of Muslims and the mention of ‘classified evidence.’ Under these circumstances, the jury may have decided on a guilty verdict more out of a fear that the defendants *might* be guilty, rather than a real belief that they *were* guilty beyond a reasonable doubt. ..” (Exhibit “A,” at 17)

Finally, Joe Pliss writes:

“...I do not have any personal relationship to Mr. Aref. However, the trial ... and circumstances of this affair have frightened me. From where I see things I’m very worried that as a community we don’t over-react to our fears... If there was a need to send a message to the people that we must be vigilant against subversive wooing, then I believe the arrest, the trial, the incarceration and depravation already inflicted have amply demonstrated this. A sentence that is excessive; a power that fails to demonstrate restraint or compassion; sends the message that as a society we are under siege and nearly out of control. This man is not a threat to society and I beg you not to make an example of him but rather to demonstrate the dignity and power of the state, though granting leniency. For my own sense of peace and order, I ask this as well...” (Exhibit “A,” at 33)

Yassin Aref asks that the Court seriously consider his entire history and character, as well as all the letters received in support of him, and the other material discussed herein, including the

troubling nature of the case, and impose a truly just sentence.

Dated: January 29, 2007.

Respectfully submitted,

KINDLON SHANKS & ASSOCIATES

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